

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE PROVISION OF
ENHANCED SERVICES IN KENTUCKY

) ADMINISTRATIVE
) CASE NO. 338

O R D E R

On August 1, 1991, this Commission initiated an investigation into the provision of enhanced services in the Commonwealth of Kentucky. The Commission further found that the provision of enhanced services falls within the jurisdiction of KRS Chapter 278 and made all telecommunications utilities with tariffs on file parties to this proceeding. All parties were required to file information with the Commission itemizing and describing enhanced services currently provided including prices applicable to each service. The Order further required the parties to inform the Commission prior to offering any new enhanced service.

On March 27, 1992, Senate Bill 323, codified as KRS 278.512 and 278.514, was enacted relating to the exemption or alternative regulation of telecommunications services within the Commonwealth. The Commission recognizes that the public interest may require that the provision of certain enhanced services be considered exempt from regulation or require alternative regulation. A copy of this statute is attached hereto and incorporated herein as Appendix A.

IT IS THEREFORE ORDERED that:

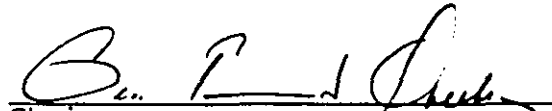
1. This administrative proceeding is dismissed.

2. By no later than August 17, 1992, all telecommunications utilities which are currently providing enhanced services within the Commonwealth shall file tariffs with the Commission pertaining to rates and conditions of service or shall file a petition pursuant to KRS 278.512 and KRS 278.514 setting forth the reasons why the service should be exempt from regulation or should be subject to alternative regulation.

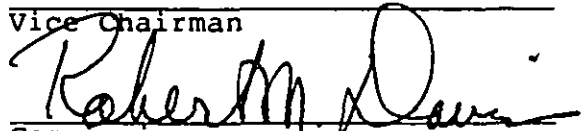
3. All telecommunications utilities regulated by this Commission except Customer-Owned Coin-Operated Telephone providers shall be served with a copy of this Order.

Done at Frankfort, Kentucky, this 14th day of July, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting

APPENDIX A

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 338 DATED JULY 14, 1992

92 RS BR 2360/EN
SB 323

AN ACT relating to telecommunications.

Be it enacted by the General Assembly of the Commonwealth
of Kentucky:

1 SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS
2 CREATED TO READ AS FOLLOWS:

3 (1) The legislature finds and determines that:

4 (a) Competition and innovation have become
5 commonplace in the provision of certain telecommunications
6 services in Kentucky and the United States;

7 (b) Flexibility in the regulation of the rates of
8 providers of telecommunications service is essential to
9 the well-being of this state, its economy, and its
10 citizens; and

11 (c) The public interest requires that the Public
12 Service Commission be authorized and encouraged to
13 formulate and adopt rules and policies that will permit
14 the commission, in the exercise of its expertise, to
15 regulate and control the provision of telecommunications
16 services to the public in a changing environment, giving
17 due regard to the interests of consumers, the public, the
18 providers of the telecommunications services, and the
19 continued availability of good telecommunications service.

20 (2) Notwithstanding any other statute to the
21 contrary, the commission may, on its own motion or upon

1 motion of a telecommunications utility, after notice and
2 opportunity for comment, and hearing if requested, exempt
3 to the extent it deems reasonable, services or products
4 related to telecommunications utilities or persons who
5 provide telecommunications services or products from any
6 or all of the provisions of this chapter, or may adopt
7 alternative requirements for establishing rates and
8 charges for any service by a method other than that which
9 is specified in this chapter, if the commission finds by
10 clear and satisfactory evidence that it is in the public
11 interest. No exemption shall be granted under this statute
12 which preempts, without notice and without hearing, if
13 requested, the existing rights and obligations of a local
14 exchange company to serve a territory under a tariff
15 approved by the Public Service Commission. Any party which
16 seeks an exemption shall certify to the commission at the
17 time of the filing that he has notified the affected local
18 exchange company by registered mail of the filing of a
19 petition for exemption, and of the right of the local
20 exchange company to request a hearing within thirty (30)
21 days of the notification.

22 (3) In determining public interest, the commission
23 shall consider the following:

24 (a) The extent to which competing telecommunications
25 services are available from competitive providers in the
26 relevant market:

- 1 (b) The existing ability and willingness of
2 competitive providers to make functionally equivalent or
3 substitute services readily available;
- 4 (c) The number and size of competitive providers of
5 service;
- 6 (d) The overall impact of the proposed regulatory
7 change on the continued availability of existing services
8 at just and reasonable rates;
- 9 (e) The existence of adequate safeguards to assure
10 that rates for services regulated pursuant to this chapter
11 do not subsidize exempted services;
- 12 (f) The impact of the proposed regulatory change
13 upon efforts to promote universal availability of basic
14 telecommunications services at affordable rates and upon
15 the need of telecommunications companies subject to the
16 jurisdiction of the commission to respond to competition;
- 17 (g) Whether the exercise of commission jurisdiction
18 inhibits a regulated utility from competing with
19 unregulated providers of functionally similar
20 telecommunications services or products;
- 21 (h) The overall impact on customers of a proposed
22 change to streamline regulatory treatment of small or
23 nonprofit carriers; and
- 24 (i) Any other factors the commission may determine
25 are in the public interest.
- 26 (4) When the commission exempts a telecommunications

1 product or service from all of the provisions of this
2 chapter, the investment, revenues, and expenses associated
3 with the service or product shall not be considered by the
4 commission in setting rates for the telecommunications
5 company's regulated services. This provision shall only
6 apply to telecommunication products or services which the
7 commission exempts after the effective date of this
8 section. Nothing herein shall prohibit the commission from
9 having access to and from examining the books and records
10 of the exempted product or service in order to determine
11 compliance with the commission's rules respecting
12 allocation of cost when setting rates for the
13 telecommunications company's regulated services.

14 (5) The Public Service Commission shall retain
15 jurisdiction over persons and services which are exempted
16 from regulation under this section, or for which
17 alternative regulatory requirements have been established
18 pursuant to this section. The commission, on its own
19 motion, or upon the motion of any person, after notice and
20 hearing, if requested, may vacate or modify any orders
21 granting an exemption or establishing alternative
22 requirements if it determines by clear and satisfactory
23 evidence that the findings upon which the order was based
24 are no longer valid, or that the exemption or
25 modifications are no longer in the public interest.

26 (6) In granting or vacating exemptions, the Public

1 Service Commission shall not be discriminatory or
2 preferential but may treat services and utilities
3 differently if reasonable and not detrimental to the
4 public interest.

5 (7) The provisions of KRS 367.150(8) and 367.160,
6 concerning the role of the Attorney General, shall apply
7 to all proceedings under this section.

8 SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS
9 CREATED TO READ AS FOLLOWS:

10 (1) Revenues derived from nonexempted, regulated
11 telecommunications services, whether essential or
12 nonessential, shall not be used to subsidize or otherwise
13 give advantage to any person providing an exempted
14 service. The commission shall require a provider of any
15 exempted service to keep separate accounts, to allocate
16 cost in accordance with procedures established by the
17 commission, and may require other acts that will assist
18 the commission in enforcing this section. Any person
19 requesting an exemption or providing a service exempted
20 pursuant to Section 1 of this Act shall have the burden of
21 proof to show compliance with this requirement.

22 (2) (a) Except as provided in subsection (2)(b) of
23 this section, any telecommunications utility that
24 willfully violates subsection (1) of this section shall be
25 subject to a penalty no greater than the revenue
26 requirement effect of moneys determined to have been

1 misallocated in the violation. For the purpose of
2 calculating the penalty under this section, the commission
3 shall not use a period longer than five (5) years.

4 (b) A local exchange carrier with fewer than
5 thirty-five thousand (35,000) access lines who willfully
6 violates subsection (1) of this section shall be subject
7 to the penalties prescribed in KRS 278.990(1).